

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN SECTION

FILED
IN CLERK'S OFFICE
2006 NOV 13 A 9:23
U.S. DISTRICT COURT
DISTRICT OF MASS.

NATIONAL GRID COMMUNICATIONS, INC.)

Plaintiff)

v.)

TOWN OF LENOX and)

LENOX ZONING BOARD OF APPEALS)

C.A. No. 05-30131-MAP

AFFIDAVIT OF MOHAMED A. ZABIAN, JR.

I, Mohamed A. Zabian, Jr., on oath, depose and state that:

1. I own land with a boundary that is less than 300 feet from the property of Murray and Karel Rose off of Lee Road, in Lenox Massachusetts (the "Rose Property"). My land shares an easement for access with the Rose Property. A copy of the plan of my property on record with the Berkshire Central District Registry of Deeds as Plat G, Plan 303 is attached to this Affidavit as Exhibit A. I own the parcels identified on the Plan as Parcel "1" and Parcel "2."
2. The easement for access is shown on the Plan as 2-R-2 and labeled "Gravel Drive."
3. I am concerned that the Gravel Drive, which I also use to access my property, will be damaged by the construction vehicles that will enter and exit the Rose Property via the Gravel Drive. Since the Plaintiff will use the Gravel Drive to access the communications tower on a regular basis, heavy commercial vehicles will continue to operate on the Gravel Drive. In its current poor condition, the Gravel

Drive will become rutted and impassable for normal use if commercial vehicles continue to pass over it.

4. I believe the party that operates the proposed communications tower should be required to improve the Gravel Drive and maintain it so that my access to my property is not impaired by its use of the Gravel Drive. Currently, we have no agreement regarding maintenance of this access easement.
5. I am also concerned that the proposed communications tower will be visible from my property. Seeing the tower from my property will adversely affect my ability to build on these parcels because a communications tower will destroy the existing beautiful rural view. Having a communications tower right in sight of my property will adversely affect my property value.
6. My property is very valuable and any loss in its value will have a significant adverse financial affect on me and my family.
7. In the Lenox Zoning Board of Appeals meetings on the application for a special permit and variances, I spoke against the request of the plaintiff to build the proposed communications tower. I was satisfied when I learned that the Town had denied the special permit to construct the communications tower.
8. Just this week, I learned that the Town was entering into a settlement regarding the proposed tower. The next day, I arranged to meet with an attorney who could represent my interests in this matter and she immediately prepared this Motion.
9. I fear that my concerns regarding the access road and the adverse effect of the communications tower on my property will not be addressed at all if I am not allowed to intervene in this action.

This statement is made under the penalties of perjury, this 10th day of November, 2006.


Mohamed A. Zabian, Jr.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CLERK'S NOTICE

This document can not be scanned due to its size, or the way in which it was bound.

The original is available for viewing in the Clerk's Office.